

**2011 Montana Legislature**

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HOUSE BILL NO. 188

INTRODUCED BY C. LONEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 37-54-102, MCA, is amended to read:

**"37-54-102. Definitions.** Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Professional Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

(4)(2) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

- (a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;
- (b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and
- (c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) "Appraisal management company" means in connection with valuation properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year, ~~an external third party authorized by a creditor of a consumer credit transaction secured by a consumer's principal dwelling, or by an underwriter or other principal in the secondary mortgage markets, that directly or indirectly performs appraisal management services in connection with valuing properties that collateralize mortgage loans or mortgages incorporated in a securitization.~~

(4) "Appraisal management services" means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer's principal dwelling:

- (a) administering an appraiser panel;
- (b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;
- (c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;
- (d) contracting with appraisers from the appraiser panel to perform appraisal assignments;
- (e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;
- (f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;
- (g) tracking and determining the status of orders for appraisal assignments;
- (h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and
- (i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include a quality control examination.

(6) "Appraiser" means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly on a periodic basis as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

(2)(8) "Board" means the board of real estate appraisers provided for in 2-15-1758.

(3)(9) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

(4)(11) "Department" means the department of labor and industry provided for in 2-15-1701.

(5)(12) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

(6)(13) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

(15) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors."

**Section 2.** Section 37-54-105, MCA, is amended to read:

**"37-54-105. Powers and duties of board.** The board shall:

- (1) adopt rules to implement and administer the provisions of this chapter;
- (2) establish and collect fees commensurate with the costs of processing an application for licensure and certification and renewal of a license or certificate;
- (3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;
- (4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;
- (5) receive and review applications for licensure and certification and issue licenses and certificates;
- (6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;
- (7) retain all applications and other records submitted to it;
- (8) adopt by rule standards of professional appraisal practice in this state;
- (9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers or registered appraisal management companies; and
- (10) perform other duties necessary to implement this chapter."

**NEW SECTION. Section 3. Appraisal management company registration -- exemption.**

- (1) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the ~~Board~~board.
  - (a) An applicant for registration as an appraisal management company in this State shall submit an application to the ~~b~~Board ~~an application on a form or forms~~ prescribed by the ~~b~~Board;
  - (b) In the event a registration process is unavailable upon the effective date of this chapter, an appraisal management company already conducting business in this state may continue to

conduct business in accordance with this chapter until the 120<sup>th</sup> days after a registration process becomes available, at which point the appraisal management company must be registered as required by this chapter in order to continue to provide or offer to provide appraisal management services in this state.

(2) An application for the registration required by subsection (1) of this section shall include the following information:

- (a) The name of the person seeking registration and the fictitious name or names (if any) under which it does business in any state;
- (b) Business address of the person seeking registration
- (c) Phone contact information of the person seeking registration
- (d) If the aAppraisal mManagement cCompany is not a corporation that is domiciled in this state, the name and contact information for the company's designated contact for service of process in this state;
- (e) The name, address, and contact information for one controlling person within the appraisal management company;
- (f) A certification that the person has a system and process in place to verify that an individual holds a license in good standing in this state pursuant to MCA 37-54-202, if a license or certification is required to perform appraisals assignments;
- (g) A certification that the person requires appraisers completing appraisal assignments at its request to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) including the requirements for geographic and product competence;
- (h) A certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transaction;
- (i) A certification that the person has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act of 1968, 15 U.S.C. 1601, et seq., including the requirement that the fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(j) A certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal service for the appraisal management company;

(k) An irrevocable uUniform cConsent to sService of pProcess pursuant to Section 5 of this chapter

(l) Any other information required by the bBoard, which is reasonably necessary to implement the act.

(3) An application for renewal of a registration shall include substantially similar information required for the initial registration as noted in subsection (2) as determined by the board

(4) Renewals of registered aAppraisal mManagement cCompanies will be in accordance with MCA 37-1-141. The department shall provide notice prior to the renewal date.

~~(5)~~

~~(6) without first obtaining a registration issued by the board under the provisions of this chapter, to directly or indirectly:~~

~~—(a) engage or attempt to engage in business as an appraisal management company;~~

~~—(b) perform or attempt to perform appraisal management services; or~~

~~—(c) advertise or represent that the person is entitled to engage in or conduct business as an appraisal management company.~~

~~—(2) Each appraisal management company seeking registration under this chapter:~~

~~—(a) shall apply for registration on forms prescribed by the board;~~

~~—(b) must meet registration requirements set by the board; and~~

~~—(c) shall pay a registration fee prescribed by the board.~~

~~—(3) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency shall comply with all provisions of this chapter related to the operation of an appraisal management company in this state with the exception of the requirement that the appraisal management company register with the board.~~

**NEW SECTION. Section 4. Registration Exemptions.** (1) The provisions of this chapter do not apply to:

(a) — a person who exclusively employs appraisers on an employer-employee basis for the performance of an appraisal assignment; or

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(b) (2) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency shall comply with all provisions of this chapter, as long as the provisions of this chapter do not conflict with federal provision laws, related to the operation of an appraisal management company in this state with the exception of the requirement that the appraisal management company register with the board.

**Comment [c1]:** This last phrase starting with the word "with" makes it unclear to me whether the AMC described would be required to register or not.

**NEW SECTION. Section 5. Owner requirements.** (1) An appraisal management company applying for registration in this state may not be more than 10% owned by:

(a) a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state; unless such license or certificate was subsequently granted or reinstated; or

(b) another entity that is more than 10% owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state, unless such license or certificate was subsequently granted or reinstated.

(2) Each person who owns more than 10% of an appraisal management company in this state:

(a) must be of good moral character, as determined by the board; and

(b) shall submit to a background examination as determined by the board.

(3) Each appraisal management company applying for registration in this state shall certify to the board that it has reviewed each entity that directly owns more than 10% of the appraisal management company and that no entity that directly owns more than 10% of the appraisal management company is more than 10% directly owned by any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state.

**NEW SECTION. Section 6. Contact individual.** (1) Each appraisal management company shall designate one individual as the main contact for communication between the board and the appraisal management company. An appraisal management company may designate a controlling person of the company as the contact individual.

(2) The contact individual designated pursuant to subsection (1):

(a) must hold a license or certificate to act as an appraiser in at least one state;

(b) must not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state, unless such license or certificate was subsequently granted or reinstated;

(c) must be of good moral character, as determined by the board; and

(d) shall submit to a background examination as determined by the board.

**NEW SECTION. Section 7. Employee requirements.** An appraisal management company may not:

(1) employ a person who may have any responsibility in ordering appraisal reports, providing quality control testing for appraisal reports, or communicating with appraisers regarding any potential appraisal report deficiencies who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation, unless such license or certificate was subsequently granted or reinstated;

(2) enter into an independent contractor arrangement with a person who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation, unless such license or certificate was subsequently granted or reinstated; or

~~— (3) enter into a contract, agreement, or other business relationship with an entity that employs or has entered into an independent contract arrangement, contract, agreement, or other business relationship with a person who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation.~~

**NEW SECTION. Section 8. Appraisal review.** An employee or independent contractor of the appraisal management company that performs an appraisal review for a property located ~~in this State~~ in this state of Montana:

(1) must be an appraiser licensed or certified in Montana ~~this state in which the property that is the subject of the appraisal is located~~; and

(2) shall comply with the review provisions of the Uniform Standards of Professional Appraisal Practice.

**NEW SECTION. Section 9. Mandatory reporting.** An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional



Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board.

**NEW SECTION. Section 10. Limitations.** An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or agreements with an individual for the performance of appraisals unless the company obtains verification that the individual is licensed or certified to perform appraisal services pursuant to this chapter. Verification by reference to information published on the website of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council is presumed to be acceptable for purposes of compliance with this section. ~~Use of the Appraisal Subcommittee (ASC) website is considered an acceptable presumption of compliance for this section.~~

**NEW SECTION. Section 11. Certification to board -- appraisal panel members.** Each appraisal management company seeking to be registered in this state shall certify to the board, on an annual basis, that the appraisal management company has a system and process in place to verify ~~on an annual basis~~ that all appraisers on the appraisal panel of the appraisal management company are licensed or certified in this state pursuant to this chapter.

**NEW SECTION. Section 12. Certification to board -- continuing licensure.** Each appraisal management company seeking to be registered in this state shall certify to the board, on an annual basis, that the appraisal management company has a system in place to verify ~~on an annual basis~~ that an appraiser to whom the appraisal management company is making an assignment for the completion of an appraisal has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation since the last time that the appraisal management company made an assignment for an appraisal to the appraiser. Use of the Appraisal Subcommittee (ASC) website is considered an acceptable presumption of compliance with this section. Verification by reference to information published on the website of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council is presumed to be acceptable for purposes of compliance with this section.

**NEW SECTION. Section 13. Certification -- adherence to standards.** Each appraisal management company seeking to be registered in this state shall certify to the board, on an annual basis, that it has a system in place to perform ~~on an annual basis~~ an appraisal review of the work of all appraisers who are

performing appraisals for the appraisal management company on a periodic basis to ensure validate that the appraisals are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

**NEW SECTION. Section 14. Annual audit.** Upon renewal, no less than ten percent of the AMC's shall be subject to a random audit. Audited AMC's shall be with required to submit the record keeping documentation described in Section 15 of this chapter for the 12 month period prior to renewal and any other documentation the board requests to validate compliance with this Act. Any costs incurred by the board during an audit may be attributed to the AMC.

~~(1) Each appraisal management company registered in this state shall have performed an audit, as required by the board, of the appraisal assignments received by licensed or certified appraisers to ensure that the appraisal assignments were performed in accordance with the Uniform Standards of Professional Appraisal Practice and the provisions of this chapter.~~

~~—(2) The audit required by subsection (1) must at a minimum consist of a statistically significant percentage, as determined by the board, of the appraisals received by the appraisal management company and completed by licensed or certified appraisers.~~

~~—(3) A copy of the appraisal management company's most recent audit report that is not more than 11 months old must be provided to the board, except that an appraisal management company may not be required to submit an audit report with its initial application for registration in this state.~~

**NEW SECTION. Section 15. Recordkeeping.** Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has retained the following documentation on an annual basis in accordance with the recordkeeping provisions of the Uniform Standards of Professional Appraisal Practice and applicable state law:

(1) a full record as prescribed by the board that includes the names of the entities requesting service from the appraisal management company and the corresponding names of the appraisers that performed the appraisal services; and

(2) all certifications and supporting documentation for board registration and renewals, including audit reports required by this chapter.

~~—NEW SECTION. Section 16. Appraiser fees.~~ An appraisal management company shall:

- ~~—(1) compensate an appraiser at a rate that is reasonable and customary for appraisals being conducted without the services of an appraisal management company in the market area of the property being appraised;~~
- ~~—(2) separate fees charged to a client by the appraisal management company for the actual completion of an appraisal from the fees charged to a lender, client, or other person for appraisal management services; and~~
- ~~—(3) permit an appraiser to record the fee that the appraiser was paid by the appraisal management company for an appraisal within the appraisal report submitted by the appraiser to the appraisal management company.~~

**NEW SECTION. Section 17. Appraiser independence -- prohibitions.** (1) An employee, director, officer, or agent of an appraisal management company registered in this state may not influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, or bribery or in any other manner, including but not limited to:

- (a) withholding or threatening to withhold timely payment for an appraisal;
- (b) withholding or threatening to withhold future business for an appraisal assignment or demoting or terminating or threatening to demote or terminate an appraiser;
- (c) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
- (d) conditioning the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate or opinion requested from an appraiser;
- (e) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;
- (f) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;
- (g) providing stock or other financial or nonfinancial benefits to an appraiser or a person related to the appraiser;

(h) allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser;

~~—(i) obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:~~

~~—(i) there is a reasonable basis to believe that the initial appraisal was flawed and that basis is clearly and appropriately noted in the loan file; or~~

~~—(ii) the subsequent appraisal or automated valuation model is completed pursuant to a bona fide appraisal review or quality control examination; or~~

(j) (i) performing any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(2) Subsection (1) may not be construed as prohibiting an appraisal management company from requesting that an appraiser:

- (a) Consider additional appropriate property information that falls within the original scope of work for that appraisal service;
- (b) provide additional information about the basis for a valuation; or
- (c) correct objective factual errors in an appraisal report.

**NEW SECTION. Section 18. Guaranty of payment.** Each appraisal management company registered in this state shall, except in cases of breach of contract or substandard performance of services, pay an appraiser for the completion of an appraisal or valuation assignment within 60 days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

**NEW SECTION. Section 19. Alteration of appraisal report.** An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser, unless the alteration is mandated by federal laws, guidelines or provisions. This section shall not apply to the conversion of appraisal reports to data streams required by fFederal lLending aAgencies.

**NEW SECTION. Section 20. Registration.** The department shall publish annually a list of appraisal management companies that have registered with the department pursuant to this chapter.

**NEW SECTION. Section 21. Advertising.** (1) An appraisal management company registered in this state shall disclose its registration number on its engagement letter for each appraisal assignment. ~~in the manner required by the board on all print and electronic advertising, including any electronic advertising or communication via the internet.~~

(2) Any appraiser who completes work for an unregistered or suspended appraisal management companyAMC shall be subject to disciplinary action for unprofessional conduct, as defined by MCA 37-1-316. An appraiser must list the appraisal management companyAMC's approved registration number in the body of the appraisal report.

**NEW SECTION. Section 22. Unprofessional conduct.** An appraisal management company engages in unprofessional conduct if it:

(1) requires an appraiser to modify any aspect of an appraisal report other than those items identified by a quality control examination ~~or for~~ including items that are found to be incomplete within the defined scope of work in the original assignment.

(2) requires an appraiser to prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and has notified the appraisal management companyAMC of this issue;

(3) requires an appraiser to prepare an appraisal report under a timeframe that the appraiser, in the appraiser's professional judgment, believes does not allow the appraiser to meet all relevant legal and professional obligations and has notified the appraisal management companyAMC of this issue;

(4) prohibits or inhibits legal and allowable communication between the appraiser and:

(a) the lender;

(b) a real estate licensee; or

(c) any other person from whom the appraiser, in the appraiser's professional judgment, believes information would be relevant;

(5) requires the appraiser to do anything that does not comply with:

(a) the Uniform Standards of Professional Appraisal Practice; or

(b) assignment conditions and certifications required by the client;

(6) makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including but not limited to:

(a) a loan closing; or

(b) a specific dollar amount being achieved by the appraiser in the appraisal report.

NEW SECTION. **Section 23. Codification instruction.** [Sections 3 through 22] are intended to be codified as an integral part of Title 37, chapter 54, and the provisions of Title 37, chapter 54, apply to [sections 3 through 22].

NEW SECTION. **Section 24. Effective date.** [October 1, 2011] is effective on passage and approval.

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**Latest Version of HB 188 (HB0188.01)**

Processed for the Web on January 6, 2011 (6:27pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

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